

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Scott Veale, David Veale, :  
Elsie Veale, :  
Plaintiffs, :  
v. : File No. 1:09-CV-160  
Windham Veterinary Clinic, :  
*et al.*, :  
Defendants. :

OPINION AND ORDER  
(Papers 1 and 2)

*Pro se* plaintiff David and Scott Veale, on behalf of themselves and their deceased dog, Elsie, seek to file a complaint against a series of defendants whom the Veales claim are responsible for Elsie's death. Pending before the Court are the plaintiffs' motions for leave to proceed *in forma pauperis*. (Papers 1 and 2).

Before a court grants an application to proceed *in forma pauperis*, 28 U.S.C. § 1915 mandates that it conduct an initial screening to ensure that the complaint has a legal basis. See 28 U.S.C. § 1915(e)(2). A court must dismiss the complaint *sua sponte* if it determines that the allegations of poverty are untrue or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

The Veales allege a series of state law causes of action against the defendants, including veterinary malpractice, fraud

and breach of contract. As they explain in the "Preliminary Statement" portion of their complaint, the plaintiffs are bring "this civil action under the applicable substantive laws of the States of New Hampshire, Vermont, and Massachusetts . . . ." (Paper 2-3 at 3). For jurisdiction, the complaint asserts diversity of citizenship under 28 U.S.C. § 1332(a)(1)(2).

For there to be jurisdiction under § 1332, there must be "complete" diversity of the parties' citizenship. See St. Paul Fire & Marine Ins. Co. v. Universal Builders Supply, 409 F.3d 73, 80 (2d Cir. 2005). "Diversity is not complete if any plaintiff is a citizen of the same state as any defendant." Id. In this case, David Veale lives in Vermont and Scott Veale lives in New Hampshire. The list of defendants includes people and institutions in both New Hampshire and Vermont. (Paper 2-3 at 2). Accordingly, diversity of the parties is not complete, and this Court cannot assert jurisdiction under § 1332.

While *pro se* pleadings must be liberally construed, see Boykin v. KeyCorp, 521 F.3d 202, 214 (2d Cir. 2008), there is no indication of a substantive federal claim being brought in this case. Consequently, and in the absence of diversity of citizenship, this case is DISMISSED without prejudice for lack of subject matter jurisdiction. The plaintiffs' motions for leave to proceed *in forma pauperis* (Papers 1 and 2) are DENIED as moot.

Dated at Brattleboro, in the District of Vermont, this 22<sup>nd</sup>  
day of July, 2009.

/s/ J. Garvan Murtha  
Honorable J. Garvan Murtha  
Senior United States District Judge